

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SHANA A. BAGLEY  
Deputy Attorney General  
4 State Bar No. 169423  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2129  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-761

13 **SHAWN PATRICK FITZGERALD**  
4027 Huntington Lane NW  
14 **Rochester, MN 55901**

**A C C U S A T I O N**

15 **Registered Nurse License No. 493122**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about August 31, 1993, the Board of Registered Nursing issued Registered  
23 Nurse License Number 493122 to Shawn Patrick Fitzgerald (Respondent). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and expired  
25 on October 31, 2010 and has not been renewed.

26 ///

27 ///

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Business and Professions Code (Code) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISION

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . ."

"...

"(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

///

1 **COST RECOVERY**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Out of State Discipline)**  
8 **(Bus. & Prof. Code §2761(a)(4))**

9 9. Respondent has subjected his Registered Nurse License to disciplinary action under  
10 Code section 2761, subdivision (a)(4), in that on or about June 4, 2009 the Minnesota Board of  
11 Nursing (Minnesota Board) entered a Decision ordering that Respondent's registered nurse  
12 license be probated in a prior disciplinary action entitled In the Matter of the Shawn P. Fitzgerald,  
13 R.N., License No. 172548-1 before the Minnesota Board. Specifically, Respondent signed a  
14 Stipulation agreeing to a consent order as follows: his license was suspended with the suspension  
15 stayed, to pay a \$500.00 civil penalty to the Minnesota Board, and to participate in the Health  
16 Professional Services Program for a minimum of 24 months that included abstaining from the use  
17 of controlled substances drugs, and to comply with other terms and conditions. That decision is  
18 now final and is incorporated by reference as if fully set forth.

19 10. The Minnesota Board based its decision on Respondent's actions in or around 2007,  
20 when Respondent diverted controlled substances from his employer for personal use.  
21 Respondent's employer confronted him regarding the diversion and Respondent signed a Letter  
22 of Agreement with his employer to remain free from drugs and alcohol. He also entered and  
23 completed a chemical dependency treatment program for opioid dependence.

24 **PRAYER**

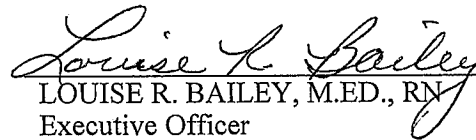
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 493122, issued to Shawn  
28 Patrick Fitzgerald;

1           2.     Ordering Shawn Patrick Fitzgerald to pay the Board of Registered Nursing the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3; and

4           3.     Taking such other and further action as deemed necessary and proper.  
5  
6

7  
8 DATED: March 9, 2011

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

11  
12 SF2010900591/ accusation.rtf  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28